

1 The Honorable Richard A. Jones
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10 UNITED STATES DISTRICT COURT FOR THE
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE
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15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 ANDREW LEE HARRIS,

19 Defendant.

20 NO. 2:15-cr-00083-RAJ

21 ORDER ON DEFENDANT'S MOTION
22 FOR COMPASSIONATE RELEASE

23 This matter comes before the Court on Defendant Andrew Lee Harris's motion for
24 compassionate release. Dkt. 136. Having thoroughly considered the parties' briefing and
25 the relevant record, the Court finds oral argument unnecessary and hereby **GRANTS** the
26 motion for the reasons explained herein.

27 **I. BACKGROUND**

28 Mr. Harris is a 32-year-old inmate currently detained at Federal Correctional
Institution Lompoc. On July 30, 2015, after an 8-day jury trial, he was found guilty of
one count of Distribution of Heroin, two counts of Possession of Heroin with Intent to
Distribute, one count of Possession of Methamphetamine with Intent to Distribute, one
count of Possession of a Firearm in Furtherance of a Drug Trafficking Offense, one count
of Felon in Possession of a Firearm, and one count of Possession of Methamphetamine.
After the jury returned its verdicts on the above counts, the Court found Mr. Harris guilty

1 of an additional count of Felon in Possession of a Firearm after a bifurcated bench trial.
 2 Dkts. 97, 98, 100. On December 18, 2015, this Court sentenced Mr. Harris to the
 3 mandatory minimum of 120 months of imprisonment, to be followed by five years of
 4 supervised release. Dkt. 113. Mr. Harris now moves for compassionate release arguing
 5 that he presents extraordinary and compelling reasons for the Court to reduce his
 6 sentence to time served and grant his immediate release.

7 **II. DISCUSSION**

8 **A. Legal Standard for Compassionate Release**

10 18 U.S.C. § 3582(c)(1)(A) allows a court to reduce a term of imprisonment if
 11 “extraordinary and compelling reasons warrant such a reduction” and “such a reduction is
 12 consistent with applicable policy statements issued by the Sentencing Commission.” The
 13 Sentencing Commission’s policy statement, in turn, says that a court may reduce a term
 14 of imprisonment if “the defendant is not a danger to the safety of any other person or to
 15 the community” and “extraordinary and compelling reasons warrant such a reduction.”
 16 United States Sentencing Guidelines (“USSG”) § 1B1.13. The policy statement clarifies
 17 that such reasons exist when (1) “the defendant is suffering from a terminal illness” or (2)
 18 “the defendant is suffering from a serious physical or mental condition . . . that
 19 substantially diminishes the ability of the defendant to provide self-care within the
 20 environment of a correctional facility and from which he or she is not expected to
 21 recover.” USSG § 1B1.13 cmt. n.1. The policy statement also directs a court to consider
 22 the factors set forth in 18 U.S.C. § 3553(a) in deciding whether compassionate release is
 23 appropriate and what form compassionate release should take. USSC § 1B1.13 cmt. n.4.

24 Mr. Harris’s motion seeks a reduction in sentence under 18 U.S.C. §
 25 3582(c)(1)(A), as amended by the First Step Act of 2018. As amended, § 3582(c)(1)(A)
 26 permits an inmate, who satisfies certain statutorily mandated conditions, to file a motion
 27 with the sentencing court for “compassionate release.” As relevant to Mr. Harris’s
 28 motion, the statute now provides:

(c) Modification of an imposed term of imprisonment. --The court may not modify a term of imprisonment once it has been imposed except that--

(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

(i) extraordinary and compelling reasons warrant such a reduction;

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(1)(A)

The relevant statute gives this Court authority to reduce a previously imposed sentence if three requirements are satisfied: (1) the inmate has either exhausted administrative review of the Bureau of Prison's failure to bring such a motion, or waited until 30 days after the request was made to the warden where the inmate is housed if that is earlier; (2) the inmate has presented extraordinary and compelling reasons for the requested reduction; and (3) the reduction is consistent with the Sentencing Commission's policy statement.

B. Exhaustion of Administrative Remedies

Prior to considering the merits of Mr. Harris's compassionate release motion, the Court must determine whether he has met the statutory exhaustion requirement for compassionate release. *See* 18 U.S.C. § 3582(c)(1)(A).

1 The parties agree that Mr. Harris has satisfied this requirement as on August 13,
 2 2020, Mr. Harris, through his attorney, submitted a letter to the warden at FCI Lompoc
 3 requesting that he be considered for compassionate release. Dkt. 136, Ex. D. He
 4 received no response. As the statutorily required 30-day period has expired, Mr. Harris's
 5 motion is properly before the Court.

6 **C. Extraordinary and Compelling Circumstances.**

7 The Court must next determine if extraordinary and compelling circumstances
 8 warrant a reduction of Mr. Harris's term of imprisonment. *See* 18 U.S.C.
 9 § 3582(c)(1)(A)(i); USSG § 1B1.13.

10 The policy statement referenced in § 3582(c)(1) was promulgated by the
 11 Sentencing Commission pursuant to the authority Congress vested in it in 28 U.S.C.
 12 § 994. That statute provides:

13 The Commission, in promulgating general policy statements regarding the
 14 sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall
 15 describe what should be considered extraordinary and compelling reasons for
 16 sentence reduction, including the criteria to be applied and a list of specific
 17 examples. Rehabilitation of the defendant alone shall not be considered an
 18 extraordinary and compelling reason.

19 28 U.S.C. § 994(f).

20 Consistent with this statute, the applicable policy statement can be found at
 21 Section 1B1.13 of the United States Sentencing Guidelines. That statement provides:

22 Upon motion of the Director of the Bureau of Prisons under 18 U.S.C.
 23 § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may
 24 impose a term of supervised release with or without conditions that does not
 25 exceed the unserved portion of the original term of imprisonment) if, after
 26 considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they
 27 are applicable, the court determines that--

28 (1)(A) Extraordinary and compelling reasons warrant the reduction...
 29 (2) The defendant is not a danger to the safety of any other person or to the
 30 community, as provided in 18 U.S.C. 3142(g); and

(3) The defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(4) The reduction is consistent with this policy statement.

U.S.S.G. § 1B1.13 (2019).

In the commentary, the Commission goes on to explain what constitutes “extraordinary and compelling reasons” to support a reduction in sentence. Specifically, Application Note 1 provides that extraordinary and compelling reasons exist if the defendant is suffering from a serious physical or medical condition...that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” U.S.S.G. § 1B1.13 cmt.n.1.

Mr. Harris argues he suffers from health conditions that heighten his risk that he will suffer complications should he contract coronavirus-19 (COVID-19), specifically obesity, likely damage to his lungs from years of smoking methamphetamine, and asthma. He posits these three factors, when taken together, provide extraordinary and compelling reasons for compassionate release. Dkt. 136.

The government opposes Mr. Harris's motion, arguing that the only medical condition he has that is recognized by the Centers for Disease Control and Prevention (CDC) to increase his risk of serious complications from COVID-19 is obesity. The government points out, however, that the evidence provided by Mr. Harris to support that he is obese is the Presentence Report prepared in this matter in October of 2015, over five years ago. The government indicates there are no medical records setting forth a diagnosis of asthma for Mr. Harris, and that he has presented no evidence showing he has sustained any lung damage from smoking methamphetamine. Dkt. 145.

To be eligible for this Court to exercise its discretion for a reduced sentence, Mr. Harris bears the burden to show “extraordinary and compelling reasons” that meet the directives set by Congress and the Sentencing Commission for compassionate release to be granted. *See Riley v. United States*, C19-1522 JLR 2020 WL 1819838 at *7 (W.D.

1 Wash. Apr. 10, 2020); *United States v. Greenhut*, No. 2:18-CR-00048, 2020 WL 509385,
 2 at *1 (C.D. Cal. Jan. 31, 2020).

3 When an inmate has health conditions that make them significantly more
 4 vulnerable to COVID-19, that likewise may constitute an extraordinary and compelling
 5 circumstance. *See e.g.*, *United States v. Cosgrove*, Case No. CR15-0230-RSM, -F. Supp.
 6 3rd-, 2020 WL 1875509 (W.D. Wash. April 15, 2020); *United States v. Dorsey*, Case No.
 7 CR16-0138-BLW-JCC, 2020WL 2562878 (W.D. Wash. May 19, 2020).

8 While some courts have held that the Sentencing Commission's policy statement
 9 on compassionate release remains controlling in the wake of the First Step Act, this Court
 10 agrees with the position taken by numerous courts that the "old policy statement provides
 11 helpful guidance, [but]...does not constrain [a court's] independent assessment of
 12 whether 'extraordinary and compelling reasons' warrant a sentence reduction under §
 13 3852(c)(1)(A)." *United States v. Cosgrove*, *Id.*; *United States v. Rodriguez*, 2020 WL
 14 1627331, (E.D. Penn. Apr. 1, 2020); *United States v. Almontes*, 2020 WL 1812713 (D.
 15 Conn. Apr. 9, 2020); *United States v. Haynes*, No. 93 CR1043 (RJD), 2020 WL 1941478
 16 (E.D. N.Y. Apr. 22, 2020); and *United States v. Maumau*, No. 2:08-cr-00758-TC-11,
 17 2020 WL 806121 (D. Utah, Feb. 18, 2020).

18 Mr. Harris has represented, and his Presentence Report (PSR) confirms, that at
 19 least at the time of sentencing he was 5'10" and weighed 225 pounds. As of that date, he
 20 met the CDC's definition of obesity with a BMI of 32 or 33. This condition alone is
 21 sufficient to establish an extraordinary and compelling reason to warrant a sentence
 22 reduction. The CDC has identified obesity as an actual risk for increased risk of severe
 23 illness from COVID-19.

24 The government challenges Mr. Harris's claim of obesity for his failing to provide
 25 recent documentation from the Bureau of Prisons (BOP) that reflects his current weight.
 26 The government ignores that we are in a pandemic and Lompoc has been the subject of
 27 significant litigation surrounding the COVID-19 conditions at that facility. Under normal
 28 times it would be a slight inconvenience for the medical staff to confirm Mr. Harris's

1 weight. The Court agrees with Mr. Harris that this Court should not expect Lompoc
2 medical staff to accommodate Mr. Harris's request for an official statement of his current
3 weight when the Court is confident that other inmates with greater priority need treatment
4 and health care, especially those affected by the virus. Dkt. 147, p. 3. Under these
5 circumstances, the Court accepts the PSR confirmation of Mr. Harris's weight, as well as
6 his current representation that his weight has not changed since his incarceration. These
7 two sources appear to mirror each other.

8 In addition to his obesity, Mr. Harris has a documented history of being a chronic
9 smoker of methamphetamine. Dkt. 147, p. 5. The CDC includes "smoking" as a medical
10 condition that puts him on the same heightened list as obesity. While the CDC guidelines
11 do not specifically call out "smoking methamphetamine" as meeting the guideline
12 definition, the damage of that type of abuse on one's lungs for years can only exacerbate
13 the damage to the respiratory system. Effective November 2, 2020, the CDC noted
14 smoking as a stand-alone medical condition that heightens one's risk of severe illness
15 from a COVID-19 infection. If prolonged smoking of tobacco is now a risk factor by the
16 CDC, it is hard to imagine that a prolonged history of inhalation of methamphetamine
17 would not be even more egregious to one's health.

18 Mr. Harris also contends he has asthma. The medical records do not document he
19 has this condition and the PSR does not mention it. His BOP records at best reference
20 allergies but nothing more in terms of medical verification. The CDC has not included
21 asthma as one of the conditions that leads to an increased risk of severe illness from
22 COVID-19 but has indicated that moderate to severe asthma might increase the risk of
23 severe illness. Mr. Harris has not provided any medical evidence that he suffers from
24 moderate to severe asthma or medical verification of any type to support this claim.
25 Hence this claim will not serve as a basis for the Court to grant his request for relief.

26 In view of the foregoing, the Court finds that Mr. Harris's combination of
27 conditions as noted demonstrate his vulnerability to COVID-19 as a serious medical
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1 condition that constitutes an extraordinary and compelling circumstance warranting
2 compassionate release under the U.S. Sentencing Guidelines.

3 **D. Safety of Others**

4 The Court next turns to whether Mr. Harris presents a danger to the safety of any
5 other person or to the community. *See* U.S.S.G. §1B1.13(2). In making this
6 determination, the Court looks to the nature and circumstances of the underlying offense,
7 the weight of evidence against him, his history and characteristics, and the nature and
8 seriousness of the danger his release would pose to any person or the community.

9 18 U.S.C. §3142(g). The Court may not reduce a defendant's sentence unless it finds that
10 "the defendant is not a danger to the safety of any other person or to the community, as
11 provided in 18 U.S.C. § 3142(g)."

12 Mr. Harris indicates that any danger he may pose to the community if released
13 early could be mitigated by an extension of his term of supervised release, and that he
14 would agree to an additional special condition requiring location monitoring and/or home
15 confinement. Mr. Harris argues that his release plan and strong family support should
16 further minimize the Court's concerns regarding his potential danger to the community if
17 released early. Dkt. 136.

18 The government counters that the serious nature of Mr. Harris's crimes in this
19 matter, including the involvement of firearms, his criminal history, his failure to accept
20 responsibility for his current crimes of conviction, and the lack of mitigating factors
21 demonstrate that Mr. Harris continues to present a danger to the community. Dkt. 145.

22 The Court has reviewed Mr. Harris's proposed release plan. It calls for him to live
23 with his cousin James Lowe who has agreed to serve as a third-party custodian. The plan
24 includes the strong possibility of employment for Mr. Harris. The plan and the
25 expectations of Mr. Harris sharing in the care of his elderly mother, all combined,
26 satisfies the Court that he presents a low risk to the community if released, especially

1 since his first six months on supervision will come with six months on home-
 2 confinement.

3 The Court disagrees with the government's analysis and finds that the record and
 4 proposal submitted by Mr. Harris outweighs its generalized danger concerns with
 5 releasing Mr. Harris. The Court's conclusion is not intended to minimize the facts that
 6 served as the basis for his underlying conviction. Dealing methamphetamine and heroin
 7 with a firearm present is extremely dangerous and of significant concern to this Court.
 8 Mr. Harris was sentenced, however, to a mandatory term of imprisonment which the
 9 Court finds harsh under the circumstances. His conviction alone should not serve as a
 10 barrier to the changed circumstances presented by COVID-19.

11 **E. Other 18 U.S.C. § 3553(a) Factors**

12 In determining whether to grant Mr. Harris's compassionate release under 18
 13 U.S.C. § 3582(c)(1)(A), the Court also considers the relevant factors other than noted
 14 above as set forth under 18 U.S.C. § 3553(a). These factors include the need for the
 15 sentence imposed, the kinds of sentences available, promoting respect for the law,
 16 providing just punishment for the offense, avoiding unwarranted sentencing disparities,
 17 and providing medical care in the most efficient manner. 18 U.S.C. § 3553(a)(2)(B, C,
 18 D); 18 U.S.C. § 3582(c)(1)(A).

19 Mr. Harris argues that he has received just punishment for his offenses in that had
 20 the government not made the decision to charge him with two crimes carrying
 21 consecutive 5-year mandatory minimum sentences, and instead had chosen to charge him
 22 with just one offense carrying a mandatory minimum, and had Mr. Harris entered a plea
 23 of guilty rather than exercise his right to go to trial, pursuant to the ranges set forth in the
 24 sentencing guidelines, he most likely would have been already released to the community
 25 by now. Dkt. 136.

26 The government contends that the § 3553(a) factors weigh against Mr. Harris's
 27 release. Specifically, with respect to the sentencing guidelines, given the guidelines
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1 range for the crime of Possession of a Firearm in Furtherance of a Drug Trafficking
2 Crime of 60 months consecutive to any other sentence, the government indicates the
3 Court imposed a sentence below the low end of the guidelines range. The government
4 argues that Mr. Harris's sentence satisfies the § 3553(a) factors and should be maintained
5 as originally imposed by the Court. Dkt. 145.

6 In analyzing the sentence imposed, it should come as no surprise that this Court
7 was saddled with two mandatory minimum sentences requiring a mandated sentence of
8 ten years. The Court reaffirms that it felt handcuffed to the charging scheme of the
9 government that following conviction eliminated any lawful means for this Court to give
10 anything but consecutive five-year sentences. At sentencing the Court was not
11 effectively permitted to consider the § 3553(a) factors for a sentence below the
12 mandatory minimum sentences.

13 By the time this Order is issued, and Mr. Harris released from custody, he will
14 have served nearly 70 months of his 120-month sentence. While the Court would
15 certainly have sentenced Mr. Harris to at least five years in custody, it would not have
16 imposed a ten-year sentence, particularly when considering the quantity of drugs charged
17 in this case, 23 grams of methamphetamine and 37 grams of heroin. The factors the Court
18 has utilized to reach this conclusion are the nature and circumstances of the offense, the
19 need for the sentence to reflect the seriousness of the offense and to provide just
20 punishment for the offense.

21 As to the need to afford adequate deterrence, the Court will place Mr. Harris on
22 house arrest for the first six months of his release. Mr. Harris will be under the
23 supervision of the U.S. Probation Office for five years. The Court is satisfied this amount
24 of time will be sufficient to determine if he has effectively been deterred from future
25 misconduct as the Court will most assuredly place him back in prison if not.

26 Upon release, Mr. Harris will have the support of his family. That he can be safely
27 released is enhanced by the fact that the United States Probation Office has approved of
28 his release address where he will be living

1 **G. Additional Term of Supervised Release**

2 18 U.S.C. § 3582(c)(1)(A) authorizes a reduction in sentence. It also permits the
3 Court to “impose a term of probation or supervised release with or without conditions
4 that does not exceed the unserved portion of the original term of imprisonment.”

5 The Court finds that an additional term of supervised release is unnecessary or
6 warranted. However, the Court finds that as an additional condition of the supervised
7 release previously imposed, Mr. Harris shall serve six months of home confinement with
8 the same standard and special conditions of the original term of supervised release.

9 **III. CONCLUSION**

10 For the foregoing reasons, Defendant Andrew Harris’s motion for compassionate
11 release is **GRANTED**. The Court hereby **ORDERS** that Mr. Harris’s term of
12 imprisonment be reduced to time served and that he be released 14 days from the date of
13 this Order to accommodate a quarantine period with the Federal Bureau of Prisons. If
14 Mr. Harris tests COVID-19 positive at any time during this quarantine period, BOP shall
15 notify the government who in turn shall immediately notify this Court so this Order can
16 be modified accordingly. The Court makes this determination because he will be
17 traveling from a state where COVID-19 is surging. Mr. Harris is **ORDERED** to contact
18 the United States Probation Office within 24 hours of his release and follow its
19 instructions.

20 The Court further **ORDERS** that as an additional condition of supervised release,
21 Mr. Harris shall serve six months in home confinement subject to the standard and
22 special conditions of the original term of supervised release. In addition, the Court
23 **ORDERS** that Mr. Harris shall participate in the location monitoring program with
24 Active Global Positioning Satellite technology for a period of six months. Mr. Harris is
25 restricted to his residence at all times except for employment, religious services, medical,
26 legal reasons, or as otherwise approved by the location monitoring specialist. Mr. Harris
27 shall abide by all program requirements, and must contribute towards the costs of the
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1 services, to the extent financially able, as determined by the location monitoring
2 specialist.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendant Andrew Lee Harris's motion for
5 compassionate release is **GRANTED**.

6 IT IS SO ORDERED.
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9 DATED this 19th day of January, 2021.

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13 The Honorable Richard A. Jones
14 United States District Judge
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